



POLICE DEPARTMENT

April 7, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Keisha Clarke
Tax Registry No. 940011
52 Precinct
Disciplinary Case No. 86224/10

The above-named member of the Department appeared before me on November 15, 2010, charged with the following:

1. Said Police Officer Keisha Clarke, while assigned to the 52 Precinct, while on-duty, on or about April 7, 2009, in front of [REDACTED], engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, by failing to voucher money recovered from the scene of a three card monte game, to wit: said Officer returned \$20 USC to an undercover officer rather than voucher it as evidence.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONTACT

The Department was represented by Javier Seymore, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through her counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Paul Oh as its sole witness

Sergeant Paul Oh

Oh has been a member of the Department for 12-and-a-half years. He began working in the 109 Precinct, assigned to Queens Vice, and is currently assigned to the Internal Affairs Bureau (IAB) Group 52. Oh has been a sergeant for over four years. Oh testified that he had performed over 150 integrity tests himself.

On April 7, 2009, Oh was part of Team Two, a technical vehicle, working on a tour from 8 00 a.m. to 4 00 p.m. He explained that when his team performs an integrity test, they actually videotape the scenario. He was the driver of the technical vehicle which records the actual events. His vehicle also operated as a "ghost vehicle" for the undercover officer [UC] in the event the UC gets hurt. Oh was with his partner, Detective Lazarte. Four teams, including the UC vehicle, comprised the integrity test team. The integrity test on April 7 was a random one whereby the Team Leader randomly chooses a precinct and sector car to examine. The Team Leader also chooses who is going to perform the test. The other type of test performed is a targeted integrity test. Oh said he had not performed a targeted integrity test in the 52 Precinct.

Oh performed an integrity test on April 7, 2009 in front of [REDACTED], within the confines of the 52 Precinct. He explained the scenario that day was called a three-card Monte, in which the officers act as if someone is hustling someone else. The UC is supposed to state to a random, unsuspecting officer that he was involved in

gambling and wants his money back. To do so, the UC contacts a random officer. Oh identified the random officer who was part of the three-card Monte on the day in question to be Respondent.

In the setup of the random integrity test, Oh was stationed on the side of the street opposite the cardboard box where the scheme was initiated. Oh heard the UC state to the random officers that he was engaged in gambling and had lost \$20.00. He said he could hear the UC and random officers discussing the lost \$20.00 from his vantage point in the technical vehicle. Oh explained that his technical vehicle was equipped with audio so he could basically hear the conversation between the parties. The UC stated one of two random officers drove by and he called for their assistance.

Oh then detailed the responsibilities of the members of his team. The Team Leader coordinates the whole situation. Team One is usually the surveillance and hospital transport car. There is also a UC vehicle, a detective and Oh were in that vehicle.

After hearing the conversation between the UC and Respondent, the UC received \$20.00 from the random officers, and the officers then went into the station house. Oh explained that he waited five to ten minutes before following Respondent to the station house so they would not become suspicious. Respondent went inside, and Oh followed behind, pretending to wait for a detective, yet keeping his eyes fixed on the Index, the Property Log and the officers. While reviewing the Index and Property Log, Oh was able to see that Respondent did, in fact, voucher the money. Oh continued that the cards and a cigar box were also recovered, but they were not listed on the Property Clerk Invoice No P642005. Oh explained how the confiscated materials should have been vouchered as

investigatory since they were collected in connection with gambling, but Respondent indicated them as found property. The three-card Monte is gambling, which Oh told the Court is a crime. It is for this reason, he said, why the money, cigar box and cards should have been vouchered as investigatory. Oh said, from his personal experience and training, that Respondent should have vouchered the total amount of money recovered, which totaled \$80.00, and should not have returned \$20.00 to the UC. His reason for stating this was that the money was proceeds from gambling and part of the voucher.

Oh testified that three-card Monte is a gambling game where a person is supposed to find a coin under the cards. There are three to four people involved in the game. One person shuffles the cards, a couple of people are the lookouts to see if anyone else is coming and a fourth person is actually playing the game, seemingly winning.

On cross-examination, Oh contended that "everybody is always a victim of a crime when they're involved in a crime," and there would be no way for an officer in Respondent's position to verify that the person to flag down a police officer claiming they were duped was actually the person with rightful title to the \$20.00. Oh said there were three people working the sting. He was present for security and technical reasons. Oh conceded he was not the one to shoot the video tape of the incident, and that the angles were such that one could not see everything that occurred. It was his conclusion, though, that he saw all he needed to see. The last time he saw the video was six months before this trial.

Oh admitted there was not much to hear on the audio tape of the incident. However, he refuted the incompleteness of the tape with the UC's verification of the entire ordeal. Oh stated that UC usually write their reports after their tours of duty end –

usually the same day or the next one. Oh said that what he heard in the video was an accurate depiction of what he heard on the date of the incident. He said that the UC was conversation into the KEL receiver in Oh's technical vehicle. Oh said he was able to hear what the UC said to Respondent. He agreed that whatever was occurring in the audio recording should also have been taking place on the video recording [camcorder] held by his partner.

Oh conceded that the objective of his integrity tests is to fool the prospective random officers. The test occurred at the end of the regular eight to four tour, but Oh said timing had nothing to do with it. They had set up the cigar box as soon as they saw the two random officers roughly a half a block away. Oh admitted that he did not hear the conversation when the UC flagged down the officers in their car. In response to being asked if it was fair that at no point he heard the UC mention the term three-card Monte, Oh replied that he did not know. Upon reviewing the UC's report, Oh stated he thought there was a typo. Oh did not speak to Respondent the date of the incident.

Oh acknowledged that UCs must do things accurately or else they will get into trouble. He also acknowledged that supervisors have to verify what their subordinates have done. Oh further agreed that UCs need only write a summary of what they witnessed, and not every detail. Oh conceded that the UC's report in this instance read that he approached Respondent and said that he was "scammed by trickery" while playing a card game. He agreed that, when the UC brought the cigar box, cards and money to the officers that Respondent claimed it looked like a three-card Monte game. Oh also noted that Respondent told the UC to ignore people doing games like the three-card Monte. He then agreed that the UC asked if he could retrieve his \$20.00, and then

¹ A KEL is a device that transmits audio sound to the technical vehicle. It is worn by the UC.

the officers recorded the UC's fictitious license. That license said the UC's name was [REDACTED], residing at [REDACTED], [REDACTED], New York. Oh noted that everything Respondent recorded regarding the fictitious identification was correct. Oh then acknowledged that Respondent handed the UC back the \$20.00 he had supposedly been swindled out of. Oh admitted that the UC neither told him in person nor stated in the report that he used the words, "three-card Monte" when speaking with the officers.

Oh acknowledged that the female UC walked past the male UC as he was talking to the random officers and shouted, "You're a fool for letting someone take your money during a card game." He also agreed that she, too, never mentioned the words, "three-card Monte." Oh said that, from the \$80.00 in the cigar box, Respondent gave the male UC back his alleged \$20.00 and vouchered the remaining \$60.00 at the end of her tour.

Oh then admitted that the three-card Monte never actually took place, that there was no unaccounted for money, and that Respondent promptly vouchered the money as found property. He confessed that the only information the officers received was that the UC was scammed out of \$20.00, and not where the other \$60.00 had come from. Oh could not answer whether, if officers came upon a cigar box with \$80.00 and nothing more, the materials should be vouchered as found property or investigatory.

After being shown the video of the encounter [Respondent's Exhibit (RX) A, dated April 7, 2009], Oh claimed he heard a woman, who may be the UC, talking to the officers. Oh said he never heard the male UC mention the three-card Monte in the video, and agreed that the game usually ends in gullible people losing money. He said there was no sign saying, "Three-card Monte, Try Your Luck." Oh stated that the video he was

shown was a fair and accurate representation of all he saw and heard on the date in question. He said that video was all he had. Oh agreed that the UCs filled out their Undercover Investigating Officers Reports at 6:35 p.m., a few hours after the incident [RX B is the male UC's worksheet and RX C is the female UC's worksheet]

Oh explained that Group 52 does integrity tests and buy and bust operations for civilians and officers alike. He said his team always needs to fill out a request for the Integrity test, and did so for this test [RX D]. The Team Leader and the Commanding Officer (CO) decide whether it is appropriate to conduct a test and which precincts to go to. The request form requires basic location and CO information and a brief description of the test itself. Oh said the normal practice was to submit the request prior to the test. The request noted it would be conducted in the 52 Precinct and specified UC I5027 as the officer involved. Oh said Police Officer Brey wrote the request and Lieutenant Croom approved it. Oh further stated that the three-card Monte scenario was entirely planned in advance of the incident. Oh acknowledged that the request indicated that an UC would engage a random police officer about a three-card Monte game he was playing. He would inform the officer that the dealer scammed him out of \$20.00. The UC would then guide the random officer to the box containing \$80.00. The test is conducted to see if the random officer handles the matter within Department guidelines.

Oh deemed Respondent's actions a failure of the test because she vouchered the materials as found property instead of investigatory and because she returned the UC the \$20.00 and only vouchered \$60.00.

Respondent's Case

Respondent testified in her own behalf

Respondent

Respondent has been a member of the Department for five years and is assigned to the 52 Precinct. As a uniformed patrol officer, she has between 70 and 100 arrests. Respondent is currently on limited duty due to surgery, but is not now, nor has ever been, modified for any reason. This is her first instance of being the subject of Charges and Specifications. Although Respondent has never been the arresting officer in a gambling-related offense, she was involved on more than one occasion with the Conditions Team as a UC for people playing three-card Monte.

Respondent was working the day tour on April 7, 2009 with Police Officer Melissa Carson, whom she identified in the video of the incident in question. Respondent did not see herself in the video, but knew they were together at the time. Someone flagged the two officers down in the vicinity of [REDACTED] while they were driving eastbound on Bedford Park toward the 52 Precinct at the end of their tour. Their tour ended at 3:40 p.m., and they had informed Central they were heading back. Carson was driving when a man waved his arms and approached the passenger side of the car near Decatur Avenue at about 3:40 p.m. Respondent described the man as speaking with an accent and looking like he had just moved to the area. The man told the officers that these two guys were playing a "magic trick" where \$20.00 of his was taken. Respondent asked him three times whether it was a three-card Monte, and the man responded in the negative each time.

Then as Carson made a U-turn to pull over, Respondent heard a woman exclaim "You should never let them take your money like that Don't you know where you are? You're in the Bronx " The officers followed the man to [REDACTED] where he showed them the cigar box with cards and money inside The man then told the officers he could see his money in there Respondent testified that there was \$80 00 total in the box The man then asked her if he could have his money back because he was tricked Respondent stated she felt bad for the man, not knowing if it was his last \$20 00, if his children needed to be fed or if he needed it to get home The man only said \$20 00 was his, and did not ask for the rest of the cash in the box In addition, she confirmed the man's story by the passerby who remarked that he should not have given up his money

Respondent then asked him for identification and took down all of his information in her Activity Log She could not remember if she handed the man the \$20, if her partner did, or if he reached into the box and got it himself The video did not aid Respondent in remembering Though, she did remember joking with her partner that it was not every day that they got the chance to directly help the owner of stolen property by simply returning it She said it felt good and assumed the victim of such a scam would feel good that a police officer helped him Nevertheless, Respondent is aware that the Internal Affairs Bureau (IAB) feels she did not handle the matter properly

Respondent testified that she gave the man back his \$20 00 because he portrayed to her that he did not know he had done anything wrong She acknowledged that a person who willingly plays a three-card Monte is doing something wrong by engaging in illegal gambling Respondent said she had acted as a UC in three-card Monte schemes before In her previous operations, however, her team tried to get at the players of the

game and not the victims. By the players, Respondent clarified, saying that typically, one person deals, one person plays and pretends to be winning, and another person looks out for the police. Her team would arrest all three, but never anyone who simply tried to participate in the game, but not in the ruse.

Respondent said her reason for not vouchering the \$20.00 given back to the man was that he would never have gotten the money back if it was taken in as evidence. At the time she gave him the money, she had only heard there was a magic trick, so there was no crime committed. She said there would be no open investigation, no three-card Monte players were arrested, and the money would have never been returned. Respondent had not seen anyone in the area playing the three-card Monte around the time she was there. She said she vouchered the box and the rest of the money as found property because no one was claiming the property and no crime was stated at the time. She did think it was a three-card Monte game, but had never heard the words "three-card Monte" or seen anyone performing the game.

Respondent had her official Department interview in July of 2009. That is the first time she learned the Department had a problem with her handling of the case. She explained the situation then as she did in court.

During cross-examination regarding her time with the Conditions Team, Respondent testified that she never gave a fourth participant his or her money back after arresting the three players in a three-card Monte scheme. She explained that the fourth person never asked for his or her money back. In those situations, Respondent said, she vouchered everything recovered because a crime had been committed. Here, she said, she gave the money back because the man [undercover] asked for it and would not have

been able to enlist the help of a victim's advocate to recover his money as the victim of an observed three-card Monte game could. Respondent said she could have arrested the UC or given him a summons if he was involved in illegal gambling, but here he said nothing about participating in a three-card Monte, so she did not. She further explained that is why she asked him three times if he was playing, and he denied it.

Respondent testified that she has to make ad hoc determinations using her own discretion when "victims" approach her looking for help. She admitted that, had she heard nothing from the UC, she would have assumed a three-card Monte game took place from the circumstances. She said the UC did a good job of convincing her that he was the victim, and she did not want to victimize him twice by vouchering the \$20 he claimed he lost and had no other way of recovering.

She explained that when she made arrests during UC stings, she would usually wait until the victim left before making arrests of the players. Respondent said she took down the UC's information because she listed him as the finder of the property on the voucher. She found this matter analogous to a woman having her purse snatched. If the pocketbook was found, Respondent would return it to the victim and not voucher the pocketbook.

Upon questioning by the Court, Respondent stated that she would have responded the same way if again presented with what she believed to be a genuine victim of a crime. Respondent took down all the UC's information in her report (Court's Exhibit 1) and included it in the voucher.

FINDINGS AND ANALYSIS

Respondent stands charged herein with failing to voucher money recovered from the scene of a three-card Monte game, to wit said officer returned \$20 USC to an UC officer rather than voucher it as evidence Respondent is found Not Guilty

The charge as worded would lead one to believe that Respondent was present during a three-card Monte game when she recovered said evidence Evidence adduced at trial, however, was that a man with a foreign accent walked over to her police vehicle and stated that he was the victim of a "magic trick " He then left and retrieved an open, coverless, cigar box containing \$80 00 and turned it over to Respondent and her partner Respondent testified that she asked him three times whether he was playing three-card Monte and he replied in the negative each time A passerby then walked by and said words to the effect that he [the man] should not give up his money like that because this is the Bronx

Although Respondent had a hunch that the man had been playing three-card Monte, she had no proof of this aside from an open cigar box with cards and money She did not observe a card game and the man denied playing three-card Monte The man asked if he could get his \$20 00 that he lost Respondent obtained his driver's license for identification, wrote down all of his information and gave him the \$20 00 She then put his information on the voucher she prepared and vouchered the cigar box and the remaining \$60 00 as "found property" back at the station house She testified credibly that she believed the man was a foreigner who was new to this country given his accent and she felt he was the victim of a scam It ended up that the "man" was an UC investigator and Respondent and her partner were random targets of a Department

integrity test

Respondent offered the DVD of the integrity test in evidence (RX A) It was a video of the test with inaudible sound Respondent could not be seen on the video and the only clear observations were of the man approaching the police vehicle, the coverless cigar box with money visible and the return of the \$20 00 to the man

Police Officers are required all day long to make split-second decisions and use their discretion In this instance, since the man denied playing the illegal gambling game of three-card Monte, Respondent was left with a decision to make She testified that she reflected on the fact that he did not ask for all the money in the box, only \$20 00 She made the decision to return the \$20 00 to the person who informed her that he was the victim of a "magic trick " She testified that she usually cannot help a victim when on patrol, but she felt good this day being able to help someone

The investigators of this integrity test failed to mention three-card Monte during the entire test In their written Integrity Test Request [RX D] to garner approval to conduct this test, it stated that the UC would engage the random police officers about a three-card Monte game he was playing in which he was scammed out of \$20 00 This never transpired The UC referred to a "magic trick " Even if the UC passerby referred to three-card Monte, it is unclear if Respondent heard that comment and that was not how the test was supposed to be done The UC at her vehicle was supposed to admit to playing three-card Monte Because the UC denied that he was playing three-card Monte, Respondent could not just make that assumption According to Respondent, the passerby, referred to the man giving up his money, but not to a three-Card Monte game By changing the dynamics of the integrity test, it should not be a surprise that the result

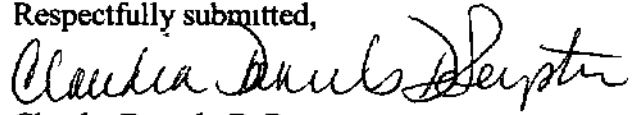
was different than expected. The effect was that a bizarre test was conducted.

Respondent did voucher the cigar box and the remaining money as found property. She also made an entry in her Activity Log about the found property. Sergeant Oh, IAB investigator, stated that Respondent failed the integrity test because she did not voucher the property as "investigatory." However, no investigation was done. Respondent did not see any people playing a card game, nor were any suspects pointed out to her by the man. In fact, the man actually brought the coverless box with money over to Respondent's vehicle. Even Oh could not answer the question when asked in a hypothetical whether officers who came upon a cigar box with \$80.00 and nothing else should voucher the items as found property or investigatory.

Respondent is not charged with pocketing the money, because she did not. She took down the man's information, his name and address from his driver's license, albeit all the information was fictitious because the man was an UC officer. She prepared a voucher and vouchered the property at the command. She even made an entry in her Activity Log about the incident (Court Exhibit 1). In essence, she did not dismiss the man who approached her with an open box with money found in the Bronx, but took his bizarre set of circumstances seriously. All of this took place at the end of her tour as she was reporting back to the station house to leave for the day. I found that Respondent acted in good faith while on duty and took proper police action by vouchering the evidence obtained and making an Activity Log entry about the event. I do not find that

Respondent engaged in any misconduct, particularly the return of the \$20 00 to the man
This is despite the fact that the implementation of the integrity test was unconventional at
best

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials

APPROVED



AUG 24 2011
RAYMOND W. KELLY
POLICE COMMISSIONER